IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6394 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MAGAN @ TAKLO RANCHHODBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6394 of 2002

MS JAYSHREE C BHATT for Petitioner No. 1

MR AY KOGJE Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 12/08/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Vadodara City

dated 11.3.2002 in exercise of powers vested in him by Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The petitioner has been branded as dangerous person within the meaning of section 2(c) of the PASA Act. The detaining authority has recorded the subjective satisfaction while exercising the powers under sec. 3(2) of the PASA Act has mainly considered the registration of four different criminal complaints registered with different police stations of Vadodara city wherein the motor-cycle of different brands were stolen which were parked in the open place. The first offence registered with Navapura Police Station on 22.1.2002 for the theft of motor-bike of Hero-Honda brand. The second offence registered with city Police Station on 24.1.2002 for the theft of Yamaha brand motor-bike. On 28.1.2002, similar complaint was registered in Raopura Police Station and fourth complaint was registered on 28.1.2002 with DCB Police Station for the theft of motor-cycle with brand name of "Hero Ranger". The authority has also placed reliance on the three different statements given by the unnamed witnesses where all of them have narrated the nature and character of the petitioner describing the events occurred on 19.1.2002, 25.1.2002 and 29.1.2002 respectively. The order of detention was executed on the next day i.e. on 12.3.2002 and the petitioner was served with the grounds for detention along with the relevant papers.

Ld. counsel has taken me through the entire memo of petition and grounds of challenge. The order is challenged on various grounds, however, ld. counsel has restricted her arguments mainly on two points. The first point is that the powers under sec. 3(2) has been wrongly exercised because this is not a case of activities which may go adverse to the maintenance of public order. So, the petitioner could not have been branded as dangerous person within the meaning of sec. 2(c) of the PASA Act. The second point argued by the learned counsel is that the order under challenge is passed mechanically and without proper application of mind. The statements of unnamed witnesses though recorded in the month of February, 2002 were placed before the detaining authority on 8.3.2002, 9.3.2002 and 10.3.2002 respectively and on 11.3.2002 the order of detention has been passed. The order passed on the next day after placement of the papers to the detaining authority by the Sponsoring authority, it should be treated as an order passed mechanically . It is pointed

out that the bunch of the papers served to the detenu, around 205 to 210 pages, it is not possible for the detaining authority to consider all relevant aspects and the fact that the petitioner was arrested for the alleged offence for the first time on or about 1.2.2002 was altogether on a different ground. The witnesses whose statements have been recorded have tried to exaggerate in their version because it is not even the say of the sponsoring authority that the petitioner was involved for the offence of house breaking during the night hours. It is rightly argued that for the sake of argument, if it is accepted that the petitioner is involved in four offences even than this acts can be said to be prejudicial to the maintenance of law and order and not against the maintenance of public order. Theft of motor-cycle parked in a open place are solitary wrong as and when the offence is committed and such wrong would normally does not affects the even tempo of life. So, there was no scope for the detaining authority to exercise the powers vested under sec. 3 of the PASA Act. The ratio of the decision in the case of Ashok Jivraj @ Jivabhai Solanki vs. Police Commissioner, Surat & Ors., reported in 2000(1) GLH p. 393. and the other decision rendered in Special Criminal Application No. 1681 of 1992 would apply to the facts of the present case. In the same way, the ratio of the decision in the case of Kalidas C. Kahar vs. State of Gujarat, 1993(2) GLR p. 1659 also would apply as the order of detention has been passed on the next day i.e. on the next day on which papers were placed by the sponsoring authority. So, the order of detention is found unsustainable. No other grounds are pressed into service and, therefore, they are not necessary to discuss these grounds.

In the result, this petition is allowed. The impugned order of detention dated 11.3.2002 passed by Police Commissioner, Vadodara City is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)

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